IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1261 OF 2003

Smt. Valsamma Mamachan, )
aged 50 years, Indian Citizen, )
Employed as U.D.C. (Ad-hoc) )
at the College of Military )
Engineering, Pune-411 031 )
(Residing at Aero View Co-op. )
Hsg. Society, Bhairavnagar, )
Dhanori, Pune-411 015. ).. Petitioner.

Versus

1) The Union of India, )
Through the Secretary, )
Ministry of Defence, South )
Block, DHQ, PO, New Delhi )
110 011. )
2) The Engineer-in-Chief, )
Army Headquarters, Kashmir )
House, DHQ, PO, New Delhi - )
110 011. )
3) The Commandant, College of )
Military Engineering, Dapodi, )
Pune - 411 031. )

4) The Headquarter, Southern )
Command (‘A’ Branch), )
Pune - 411 001. ... )... Respondents.

Mr. S. R. Saxena for the Petitioner.
Mr. D. A. Dube for the Respondents.

**CORAM : V.G. PALSHIKAR, and**
**V.R.KINGAONKAR, JJ.**
**DATED : 22ND MARCH, 2006.**

**JUDGMENT (Per : V.R.KINGAONKAR, J.):**

By this Petition, the Petitioner impugns order passed by the Central Administrative Tribunal in Original Application No.1048 of 1996 dismissing her claim for regularisation of her services in the cadre of Lower Division Clerk from the date of her appointment w.e.f. 7th June, 1974 and to grant her incidental benefits arising therefrom.

2. Briefly stated, the Petitioner’s case is that she was appointed as Temporary Lower Division Clerk (LDC)

on establishment of Southern Command, "A" Branch, Pune on probation for a period of two years w.e.f. 14th October, 1971. Likewise many others, she was directly appointed and was not a candidate recruited through employment exchange. She was transferred to College of Military Engineering, Pune, against regular vacancy. She completed the probation period satisfactorily and was lateron confirmed in the grade under Office Order dated 25th November, 1991. She was assigned benefits of quasipermanency in the grade of LDC from 14th October, 1974. Subsequently, she was informed under letter dated 1st October, 1990 that her services were being regularised with prospective date but the previous service will not count for seniority or for promotion to the higher post though it would count for the purpose of pay, leave and other benefits. Still, however, by yet another letter dated 31st December, 1991 she was informed by Respondent No.2 that her name was wrongly included in the list of employees whose services were to be regulated. Therefore, her name was deemed to have been "excluded" from the list of 98 employees whose services were to be regularised. She made representation to Respondent No.1. She awaited the result of her representation but her request for regularisation as well as promotion came to be rejected vide letter dated 20th

September, 1996.

3. The Petitioner approached the Tribunal to seek relief of declaration that her services may be deemed as regularised from the date she was appointed and had completed the probation period. She urged for parity with other similarly placed employees whose services were regularised as a result of the directions given in Original Application Nos.315 of 1993 and 322 of 1987. The Tribunal observed that benefits of the said judgment could be extended to the Petitioner but rejected her claim on the ground of delay and laches. The Tribunal held that the Petitioner committed inordinate delay in seeking relief and was not diligent in pursuing the remedy. Consequently, only on the ground of limitation, delay and laches her Original Application No. 1048 of 1996 came to be dismissed.

4. Feeling aggrieved, she has filed the present writ petition and has urged to set aside the impugned order.

5. There is no dispute about the fact that similarly placed 17 civilian employees working on establishment of College of Military Engineering, Pune, had filed

Original Application No. 315 of 1993 for regularisation of their services and consequential benefits. Their application was allowed by the Tribunal. Another group of similarly placed employees had preferred Original Application No.322 of 1987 which was also allowed by the Tribunal. So far as the merits of the case are concerned, the finding of the Tribunal is in favour of the Petitioner. The Tribunal in para 10 of the impugned order has held :

> "There is no doubt that the applicant's case is identical to the case of the applicants in OA No.315/93 and 322/87. Normally, in such a situation, the benefit of the judgment in the aforesaid OA ought to have been extended to the applicant, but we find that the applicant did not bother to agitate well in time when her colleagues similarly placed had already got the benefit."

6. In view of the above finding on merits, the only question for consideration is whether the claim of the Petitioner could be rejected solely on the ground of delay and laches.

7. The Petitioner was not really aggrieved at the

initial stage in as much as her name was included in the list of 98 employees whose services were to be regularised. It was only on 31st December, 1991 that Respondent No.3 informed her to the effect that her name had been erroneously included in the list of those employees and the same was required to be deleted from the list. She made a representation within a reasonable time frame i.e. on 11th March, 1992 and sought inclusion of her name in that list. Respondent No.3 recommended her case vide a letter dated 26th March, 1992 and forwarded the same to Respondent No.2. Respondent No.2 informed by a letter dated 18th August, 1992 that the matter was being taken up with the Ministry of Defence. Her case was recommended again when she made another representation dated 5th June, 1995. She had not kept a complete silence after exclusion of her name from the list of employees, whose services were being regularised, after she came to know about the purported action of the Respondents.

8. It appears that Original Application No.315 of 1993 filed by Smt. K. Mathew and others was allowed on 13th August, 1993. The earlier Original Application No. 322 of 1987 was allowed and as such the proposal for regularisation of the services was

internally moved by the Respondents. We see no tangible reason as to why benefit of the identical judicial pronouncement could not be extended by the Respondents to the Petitioner when her case is squarely covered by the same principle. She could not have been singled out and discriminated only because she had not preferred a separate application before the Tribunal along with others. It cannot be said that she had waived her claim. It is well settled that there is no waiver unless specifically proved and pleaded. The Respondents did not say that the Petitioner's claim was waived at any point of time.

9. We are, therefore, inclined to hold that the Respondents should have, on their own, granted identical benefits to the Petitioner without technical objections that she was not a party to the earlier litigation in the Original Application No.315 of 1993 and Original Application No. 322 of 1987. A rightful claim of an employee cannot be lightly brushed aside only on the ground of certain delay which too is a result of expectation entertained by her that the representation will find favourable response. All said and done doctrine of delay and latches is not a rigid principle. A pragmatic view is required to be taken in such a case. The Tribunal has committed

error while rejecting the claim of the Petitioner in this behalf. Consequently, we are inclined to quash the impugned order by allowing the present writ petition.

10. In the result, the writ petition is allowed and the impugned order is quashed and set aside. The Respondent shall regularise the services of the Petitioner with effect from completion of her probation period i.e. 7th June, 1974 and shall grant all the service benefits which have been granted to similarly placed employees in Original Application No.315 of 1993. Rule made absolute in the above terms. There shall be no order as to costs.

Sd/-

**(V.G.PALSHIKAR, J.)**

Sd/-

**(V.R.KINGAONKAR, J.)**